

**UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK**

CHI KONG LEUNG on behalf of himself and all)
others similarly situated,)

Plaintiff ,)

v.)

HOME BOY RESTAURANT INC. d/b/a)
TRIBECA GRILL and DREW NIEPORENT,)

Defendants.)

Case No. 07-cv-08779 (RJS)

**NOTICE OF PROPOSED
SETTLEMENT OF CLASS
ACTION LAWSUIT,
CERTIFICATION OF FLSA
COLLECTIVE ACTION,
CERTIFICATION OF STATE
LAW CLASSES, AND
SETTLEMENT HEARING**

**TO: ALL HOURLY EMPLOYEES WHO HAVE WORKED OR CONTINUE TO
WORK FOR HOMEBOY RESTAURANT INC. d/b/a TRIBECA GRILL AND
DREW NIEPORENT (“TRIBECA GRILL”)**

PLEASE READ THIS NOTICE CAREFULLY

You may be a Class Member who is entitled to receive money under a proposed class action settlement. You should read this Notice carefully.

If you are eligible, Tribeca Grill encourages you participate in this Settlement. Tribeca Grill will not retaliate against current or former employees who claim their share of this Two Hundred Thirty-Seven Thousand Dollars (\$237,000) dollar settlement.

- If you have any question regarding this notice, questions concerning how to complete the attached forms, or questions concerning the calculation of your share of the settlement fund contact Class Counsel, D. Maimon Kirschenbaum, Joseph & Herzfeld, LLP, 757 Third Avenue, New York, NY 10017; (212) 688-5640; fax (212) 688-2548.

IMPORTANT DEADLINES:

- **Last Day To Submit a Blue Consent To Join Form: _____ (45 days after mailing of this Notice)**
- **Last Day To “Opt Out” Of The Settlement Class: _____ (45 days after mailing of this Notice)**

- **Last Day To Object To The Settlement:** _____ (45 days after mailing of this Notice)

INTRODUCTION

A class action was brought against Tribeca Grill which raises claims for unpaid wages, overtime, tips and other compensation. The Parties to the lawsuit reached a settlement which has been granted preliminary approval by the United States District Court for the Southern District of New York. This Notice informs you about your rights and options under the settlement.

If finally approved, the proposed settlement will resolve all claims alleged in this lawsuit, including but not limited to the claims, for failure to properly pay wages under state and federal law, for illegal retention of tips and for any other alleged illegal act or omission alleged in this lawsuit. A hearing will be held _____ at ____:00 ____ a.m. before the Honorable Richard J. Sullivan, United States District Judge of the United States District Court for the Southern District of New York (Judge Sullivan), in Courtroom _____, of the United States District Courthouse, 500 Pearl Street, New York, New York 10007, to address whether the proposed settlement of claims against Defendants is fair and reasonable and should be approved.

If you worked for Tribeca Grill at any time from September 5, 2005 through September 5, 2008 (FLSA Claim Period), you should sign, date and return the attached Blue Consent to Join Form by _____. By submitting the Blue Consent to Join Form, you will be eligible to receive a higher compensation amount from the Settlement Fund (see the "How Will My Share Be Calculated" section, below). If you were employed outside the FLSA Claim Period, you are not eligible to submit a Blue Consent to Joint Form.

If you do not choose to Opt-Out of the Settlement Class, you will be bound by the terms of this Settlement.

WHAT IS A CLASS ACTION?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as "class representatives," file a lawsuit asserting claims on behalf of the entire class.

WHAT IS THE PURPOSE OF THIS NOTICE?

Judge Sullivan has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you:

- Of your right to money under the Settlement;
- That the Settlement Class has been certified and that if you do not "opt-out" of the Settlement Classes you will be bound by the terms of the Settlement Agreement and release your right to sue Tribeca Grill for, among other claims, unpaid wages, improper retention of tips, unpaid overtime compensation, and penalties during the time you were a Class Member;

- That you have a right to “opt-out” of the Settlement Class and a right not be bound by the terms of the Settlement Agreement; and,
- That you have a right to file objections to the Settlement.

WHAT IS THIS CASE ABOUT?

On or about August 2, 2007, a server formerly employed by Tribeca Grill, filed this class/collective action lawsuit against Tribeca Grill in the United States District Court for the Southern District of New York, Civil Action No. 07 CV 08779 (RJS). The lawsuit alleges that Tribeca Grill violated federal and state labor laws governing the payment of minimum and/or overtime wages to tipped employees and employers retention of employees’ tips. Such laws include the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.*, New York Labor Law §§ 191, 193, 196-d, 198-b, 650, *et. seq.*, 652, and 663 and relevant sections of N.Y. Comp. Codes R. & Regs. Specifically, the Complaint contends that Tribeca Grill: (1) allowed non-customarily tipped employees such as managers and other non-service employees to receive tips; (2) maintained an involuntary tip-pool policy; (3) illegally retained portions of its employees’ tips and were therefore, unable to claim entitlement to any federal or state tip credit; (4) failed to pay its non-exempt hourly employees minimum wage for all hours worked; and (5) failed to pay overtime for all hours worked in excess of forty hours per workweek. The Class Representatives initially defined the proposed class as consisting of: “all non exempt tipped employees employed by Defendants, including servers and/or busboys on or after the date that is six years before the filing of the Complaint in this case.”

WHAT ARE THE TERMS OF THE SETTLEMENT AGREEMENT?

The parties have agreed to settle this matter for the sum of Two Hundred Thirty-Seven Thousand Dollars (\$237,000) (including attorneys’ fees and expenses, and enhancement fees for four plaintiffs who played an integral role in this lawsuit, and any of Defendants’ tax or withholding liability as a result of the settlement).

Monetary Payment

If the Settlement is given final approval by the Court, the maximum amount that Tribeca Grill will have to pay is Two Hundred Thirty-Seven Thousand Dollars (\$237,000). If the Court also approves the payments set forth below, the following expenses will be deducted from Two Hundred Thirty-Seven Thousand Dollars (\$237,000) prior to distribution of the settlement funds to the Class Members:

- Payment to the Named Class Representative: If the Court approves such payment, the Class Representative, Chi Kong Leung, will receive an incentive payment of Five Thousand Dollars (\$5,000). In addition, Chung Kwok Or and Chelsea McKinnies, two other Settlement Class Members, will each receive incentive awards of Two Thousand Five Hundred Dollars (\$2,500). These payments are made because the Class Representative, Chung Kwok Or and Chelsea McKinnies provided many hours of service to the class by helping Class Counsel formulate claims and by providing documents to support the case.

- Attorneys Fees: Class Counsel will apply to the Court attorneys' fees in the amount of 33.33% of the remaining portion of the total class recovery, which amounts to Seventy-Nine Thousand Dollars (\$79,000). This amount will be requested given the hundreds of hours class counsel spent in pursuing this case on behalf of the Settlement Class Members, given the risks that Class Counsel took that no fees would be recovered, and given the result achieved for the Class Members.

If the Court approves these payments, after these deductions, the remaining One Hundred Forty Eight Thousand Dollars (\$148,000) in settlement funds will be distributed according to the method set forth in the "How Will My Share Be Calculated" section, below.

Dismissal of Case and Release of Claims

In exchange for the payment set forth above, this action will be dismissed with prejudice, and the Class Members will fully release and discharge Tribeca Grill from any claims for unpaid wages, failure to pay minimum wage, illegal retention of employees' tips, unpaid overtime, unpaid travel time, unpaid waiting and unrecorded time, spread of hours violations and failure to maintain and furnish employees with proper wage records, and all other claims that were or could have been asserted in this Wage Action under the FLSA, or state wage and hours laws, up to and including the date of final court approval of the settlement which is projected to occur on or about _____, 2008 (DATE OF THE FAIRNESS HEARING). **It is very important that you understand the terms of the Release. If you have any questions concerning the release of your claims against Tribeca Grill, you may wish to contact Class Counsel regarding the scope of the Release.** When the claims for unpaid wages, failure to pay minimum wage, illegal retention of employees' tips, unpaid overtime, unpaid travel time, unpaid waiting and unrecorded time, and failure to maintain and furnish employees with proper wage records are dismissed with prejudice, that means the Court will not consider claims any further; in other words, the case is over. When claims are released, that means no one covered by the release can sue Tribeca Grill again over those claims.

ARE YOU A CLASS MEMBER FOR PURPOSES OF THE SETTLEMENT?

You may be a Class Member if you meet all of the following criteria:

1. You are or were employed by Tribeca Grill as an hourly employee during either of the following periods:
 - Under applicable state laws, from October 11, 2001 through September 5, 2008 (the "State Law Period").
 - Under the FLSA, from September 5, 2005 through September 5, 2008 (the "FLSA Claim Period").

WHAT ARE YOUR OPTIONS?

You have several options. Make sure you read this section carefully and submit the proper forms before the deadlines listed in this section.

1. **Participate in the Settlement:**

If you are a class member and do not opt-out of this Settlement, you will recover most of your share of the Settlement funds.

If you worked for Tribeca Grill during the period of September 5, 2005 through September 5, 2008, you can submit a Blue Consent before _____, 2008 (**45 days after mailing of this Notice**) and join the action alleging FLSA violations. Submitting a Blue Consent entitles you to you to a full share of the Settlement Funds. If you choose to file a Blue Consent to Join Form, be sure to make a copy of the signed form for your Records. The Blue Consent to Sue Form should be forwarded to:

Class Counsel:

D. Maimon Kirschenbaum,
Joseph & Herzfeld, LLP,
757 Third Avenue,
New York, NY 10017;
tel (212) 688-5640; fax (212) 688-2548

2. **Opt-Out of the Settlement Class:**

If you do not want to participate in the settlement, or you want the right to pursue your own lawsuit, then you must opt out of the Settlement by _____, 2008 (**45 days after mailing of this Notice**). If you do not Opt Out, you will be bound by the terms of this Settlement. To Opt Out you must send a letter which states clearly your intent to opt-out, postmarked no later than _____, 2008 (**45 days after mailing of this Notice**). You must include your Name, Social Security Number, and the period for which you worked for Tribeca Grill in a Class Position. If you choose to opt-out, send your letter to Class Counsel.

3. **Objecting to the Settlement:**

If you wish to comment on, or object to, the proposed Settlement, the proposed Plan of Allocation, or the application for attorneys' fees and costs, you may do so. Written comments or objections must be postmarked by _____, 2008 (**45 days after mailing of this Notice**), and sent to both addresses below:

<p>Class Counsel:</p> <p>D. Maimon Kirschenbaum, Joseph & Herzfeld, LLP, 757 Third Avenue, New York, NY 10017; tel (212) 688-5640; fax (212) 688-2548</p>
<p>To Defense Counsel:</p> <p>Carolyn D. Richmond Eli Z. Freedberg Fox Rothschild LLP 100 Park Avenue, Suite 1500 New York, NY, 10017 tel (212) 878-7900; fax (212) 692-0940</p>

HOW WILL MY SHARE BE CALCULATED IF I PARTICIPATE?

Each Class Member will receive a share of the One Hundred Forty Eight Thousand Dollars (\$148,000) in Settlement Funds that remain after the deductions of the enhancement payments, and attorneys' fees and costs. Your share will depend on the number of hours you worked within the applicable class period, the job position(s) you worked in, and whether you submit a Blue Consent to Join Form. **Eligible Class Members who submit a valid Blue Consent to Join form will maximize their potential recovery.** If you do not want to participate in the Settlement because of the factors that will be applied to your claim, you may choose to opt out of the Settlement Class and pursue an individual legal action against Tribeca Grill.

1. Distribution Allocation and Examples of Recovery

To calculate your share, the Class Counsel will determine the number of hours you worked within the State Law Period, as well as during the FLSA Claim Period. If your last position at Tribeca Grill was as a server then the total number of hours you worked during the State Law Period will be multiplied by three (3) to determine your Base Points. If your last position at Tribeca Grill was as a runner/busser then the total number of hours you worked during the State Law Period will be multiplied by two (2) to determine your Base Points. If your last position at Tribeca Grill was as a bartender then the total number of hours you worked during the State Law Period will be multiplied by one and a half (1.5) to determine your Base Points. The differences between the multipliers is based on Class Counsel's assessment of the relative strengths of the various claims made, as well as the likelihood of the various positions being exposed to certain violations. For example, bussers usually received a smaller share of tips than the servers, therefore their recovery, if any, would likely have been smaller than the other classes' recovery.

In addition, employees who worked within the FLSA Claim Period may increase their points by submitting a Blue Notice of Consent Form. Employees who submit a valid Blue Notice of Consent Form will have their base points increased by three percent (3%) to calculate their Total Points. If you do not submit a Blue Notice of Consent Form (or are not eligible to do so), your Base Points will equal your Total Points.

If you remain in the Class, you will receive your pro-rata share of the One Hundred Forty Eight Thousand Dollars (\$148,000) based on the percentage of your Total Points to all of the points for all of the Class Members combined. For example, if your Total Points equaled 1% of all the points for all of the Class Members combined, you would receive \$1480. If your total points equaled 3% of all the Class Members Total Points combined, you would receive \$4,440.

In general, the longer you worked for Tribeca Grill, and the more hours you worked, in the State Law Period, the more money you will receive. However, these are just examples to illustrate how the calculation formula might be used to distribute the Settlement Fund. The amount you will recover will change according to the number of Class Members who participate in the Settlement.

2. Uncashed Checks

You will have ninety (90) calendar days after mailing by the Defendants' Counsel to cash your settlement check. If you do not cash your settlement check within the 90 day period, your settlement check will be void and a stop-payment will be placed. If this happens, Tribeca Grill will wait another two hundred and seventy five (275) days for you to request a replacement check. If you do not request a replacement check by that time, the money reverts back to Tribeca Grill.

EXAMINATION OF PLEADINGS AND PAPERS / ADDITIONAL INFORMATION

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you are advised to refer to the underlying documents and papers on file with the Court. This file may be inspected during the hours of each Court business day at the Office of the Clerk of the Court, United States District Courthouse, 500 Pearl Street, New York, New York 10007.

If you have questions about this Notice, or want additional information, you can contact the D. Maimon Kirschenbaum, at Joseph & Herzfeld, LLP, 757 Third Avenue, New York, NY 10017; tel (212) 688-5640; fax (212) 688-2548. Again, the important deadlines are:

Last Day to Submit a Blue Consent To Join Form: _____, 2008
(postmarked, or received if sent other than by mail)

Last Day To "Opt Out" Of The Settlement Class: _____, 2008

Last Day To Object To The Settlement: _____, 2008

CONSENT TO JOIN FORM (BLUE)

Leung, et al. v. Home Boy Restaurant Inc., et al. 07-cv-8779 (RJS)

D. Maimon Kirschenbaum
c/o Joseph & Herzfeld, LLP
757 Third Avenue
New York, New York 10017
(212) 688-5640
Fax (212) 688-2548

TO BEST PROTECT YOUR RIGHTS, RETURN THIS CONSENT TO JOIN FORM

THE CONSENT TO JOIN FORM MUST BE POSTMARKED NO LATER THAN

		Name/Address Changes, if any
Name:	_____	_____
Address:	_____	_____
City, State Zip Code:	_____	_____
	() _____	() _____
	Area Code Home Telephone Number	Area Code Home Telephone Number

1. I, _____ (print your name), want to join the lawsuit entitled **Leung, et al. v. Home Boy Restaurant Inc., et al. 07-cv-8779 (RJS)**, alleging that Defendants have violated the Fair Labor Standards Act (FLSA) and applicable state labor laws. I understand that by joining this lawsuit I will become a plaintiff. By joining this lawsuit, I designate the plaintiff named in the complaint as my representative, to the fullest extent possible under applicable laws, to make decisions on my behalf concerning my FLSA claim, the method and manner of conducting and resolving the litigation, and all other matters pertaining to the lawsuit.
2. I understand that I have the right to choose other counsel and to pursue my claims solely on my own behalf, and I choose to be represented in this matter by Class Counsel Joseph & Herzfeld, LLP.
3. I hereby agree to be bound by the class action and collective action settlement approved by my attorneys, and approved by this Court, as fair, adequate, and reasonable, including the applicable releases stated therein.

Dated: _____
Signature _____